

1 **Sean C. Chapman**
2 **Law Office of Sean C. Chapman, P.C.**
3 100 North Stone Avenue, Suite 701
4 Tucson, Arizona 85701
5 Telephone: (520) 622-0747
6 Fax: (520) 628-7861
7 Arizona State Bar No. 012088
8 Attorney for Defendant **Swartz**
9 Sean@seanchapmanlaw.com

10 IN THE UNITED STATES DISTRICT COURT
11 ⁷
12 FOR THE DISTRICT OF ARIZONA
13 ⁸
14 UNITED STATES OF AMERICA,) CR15-1723 TUC RCC(DTF)
15)
16 Plaintiff,) **SIXTH MOTION TO CONTINUE**
17) TRIAL
18 v.)
19))
20 Lonnie Ray Swartz,)
21))
22 Defendant.)

23 It is expected that excludable delay under Title 18, United States Code, §
24 3161(h)(1)(F) will occur as a result of this motion or an order based thereon.

25 The defendant, through undersigned counsel, moves to continue the trial in this
26 matter from its currently scheduled date, June 19, 2017 for the reasons that follow.

27 The government indicted this matter in September, 2015 roughly after three years
28 of investigation. The matter has been in litigation now for 18 months and the
29 government has disclosed over 10,500 pages of documents, and the existence of roughly
30 50 to a 100 potential witnesses. The government has also disclosed ten experts

1 including a criminalist, a shooting incident re-constructionist, two forensic medical
2 experts from Mexico, a forensic medical examiner from the Pima County Medical
3 Examiners Office, two forensic chemical experts from Mexico, a use of force expert, a
4 video expert, and a forensic pathologist.
5

6 The defense has disclosed a use of force expert, a police psychologist to talk
7 about the stressors associated with a police shooting and how they impact the perception
8 of the shooter, a forensic pathologist, and a graphic video expert.
9

10 Not surprisingly, the Court has designated this matter a complex case.

11 The evidence in this case will show that the decedent and others in Mexico were
12 attempting to injure law enforcement officers in the United States by hurling rocks at
13 them as they tried to apprehend two drug smugglers who were climbing over the
14 international boundary fence. A key issue in the case is whether the decedent, who was
15 shot multiple times by Agent Swartz, received the fatal shot to his head as he was
16 standing, or after he had fallen to the ground. The government and defense are both
17 aware of this key issue and have proffered testimony from their experts on it. The
18 government's pathologist claims that the decedent was alive and on the ground when he
19 received the fatal head shot. The government's video expert has created an unreliable
20 video clip (subject of a pending *Daubert* challenge) purporting to show movement by
21 the decedent on the ground.
22
23
24
25
26

1 The defense pathologist believes that the decedent was still standing when he
2 received the fatal shot. The defense graphics expert is likely to testify that the claim by
3 the government video expert that the decedent moved on the ground is unreliable for
4 multiple reasons.
5

6 At any rate, as indicated above, the position of the decedent (standing or on the
7 ground) when he received the fatal head shot is critically important to the parties and
8 will be the subject of a great deal of evidence and testimony at trial.
9

10 On April 20, 2017, almost five years after the shooting, 18 months after securing
11 an indictment, and only 59 days before trial, the government disclosed its intent to use
12 the testimony of a blood spatter expert on this critical issue. The government's expert
13 claims that blood splatter in the area of the decedent suggests that the decedent was on
14 the ground and alive when he was shot, with his head possibly raised. This testimony is
15 speculative at best and will be the subject of a *Daubert* challenge by the defense if the
16 Court does not simply preclude the testimony because of late disclosure. If this expert
17 is not precluded, however, the defense will need to locate and retain his own blood
18 splatter expert. Given the proximity of the current trial date, however, there simply isn't
19 enough time now to do this.
20
21

22 Based on the foregoing, the defendant requests that the Court continue the trial,
23 or, alternatively preclude the government's blood splatter expert. Government's
24 counsel has been advised of this motion and objects to it.
25
26

Respectfully submitted this 20th day of April, 2017

LAW OFFICE OF SEAN CHAPMAN, P.C.

BY: /S/ Sean C. Chapman
Sean Chapman
Attorney for Defendant

CERTIFICATE OF SERVICE

The undersigned certifies that on April 20, 2017, caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which sent notification to the following:

Wallace H. Kleindienst
Mary Sue Feldmeier
Wallace.Kleindienst@usdoj.gov
Mary.Sue.Feldmeier@usdoj.gov
US Attorneys Office – Tucson, AZ
405 W. Congress, Suite 4800
Tucson, AZ 85701-4050

Serena Lara